



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: The Commission

FROM: Kathleen Guith *KG*
Acting Associate General Counsel for Enforcement

Lynn Y. Tran *LYT*
Assistant General Counsel

Tanya Senanayake *TS*
Attorney

SUBJECT: MUR 6838 (Unknown Respondent)

RE: Revised Factual and Legal Analysis

On September 13, 2016, the Commission voted to substitute the name Joseph Aossey in the place of "Unknown Respondent" in its previous reason-to-believe findings that Unknown Respondent violated the Federal Election Campaign Act, as amended, by failing to include a proper disclaimer on a mailer as required under 52 U.S.C. § 30120(a) and failing to report expenditures or independent expenditures under 52 U.S.C. § 30104(c); exercise its prosecutorial discretion to dismiss the matter; direct OGC to revise the Factual and Legal Analysis ("F&LA") as appropriate; issue a letter of caution; and close the file. *See* Certification, MUR 6838 (Unknown Respondent) (Sept. 16, 2015).

We have revised the F&LA as attached to reflect the discussion at the table at the September 13, 2016 Executive Session. Specifically, we revised the F&LA to reflect that the Commission exercised its prosecutorial discretion to dismiss the matter.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENT: Joseph Aossey MUR 6838

6
7 **I. INTRODUCTION**

8 The Complaint in this matter arises from a mailer distributed in Cedar Rapids, Iowa, that
9 expressly advocates the election of two federal candidates without a proper disclaimer.

10 Based on the available information, the Commission now substitutes the name Joseph
11 Aossey in the place of "Unknown Respondent" in the Commission's previous reason-to-believe
12 findings in this matter and dismisses this matter with a letter of caution.

13 **II. FACTUAL BACKGROUND**

14 The Complaint in this matter alleged that a postcard mailer distributed in Cedar Rapids,
15 Iowa, that references three federal candidates "appear[s] to be a violation of federal law" because
16 "the entity claiming to have sent the postcard is unregistered under either federal or state law."¹ The
17 postcard bears the photographs and names of two federal candidates and two state candidates, with
18 the words, "Vote Tuesday June 3rd" and "Vote for Representation that works for YOU!"² The back
19 of the mailer, to the left of the addressee area, contains the name of a third federal candidate, with a
20 large question mark below this name, and below that, in smaller typeface, "After 22 years in the
21 Iowa House[,] why are our roads so bad?" Below this wording, in small typeface, the mailer
22 contains the disclaimer, "Paid for by Voters for Better Government." Finally, the mailer contains a
23 bulk mail permit imprint. The mailer contains no return address.

¹ Compl. at 1.

² *Id.* at 3.

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1 The Commission previously found reason to believe that Unknown Respondent violated
2 52 U.S.C. §§ 30104(b) or (c) and 30120(a) by failing to report expenditures made in connection with
3 the mailer and by failing to include a compliant disclaimer on the mailer.³ The Commission took no
4 action on whether the expenditures associated with the mailer required disclosure on a 24-hour
5 report under 52 U.S.C. § 30104(g).⁴ The Commission has completed its investigation.

6 III. SUMMARY OF INVESTIGATION

7 During its investigation, the Commission identified the person who paid for the mailer,
8 the amount disbursed, and that the mailer was sent six days before the primary election along
9 with an additional, nearly identical mailer. Specifically, the District Business Mail Entry Office
10 of the U.S. Postal Service in Cedar Rapids, Iowa, identified Adcraft Printing and Mailing
11 (“AdCraft”) of Cedar Rapids, Iowa, as the holder of the bulk mail permit used to distribute the
12 mailer. Brian Gallagher, the owner of AdCraft, provided specific information about the creation
13 and dissemination of the mailers. Gallagher stated in an interview that Joseph AOssey of Cedar
14 Rapids, Iowa, had requested that AdCraft, a general commercial printing company, develop and
15 distribute two mailers. According to Gallagher, AOssey provided AdCraft with the photos and
16 text for the mailers on or around May 22, 2014. Gallagher stated that, when he requested a
17 disclaimer for the mailers, AOssey provided him with the disclaimer, “Paid for by Voters for
18 Better Government.” AdCraft then created the two mailers for AOssey.

19 AdCraft delivered the mailers to the U.S. Post Office on May 28, 2014, just days prior to
20 the June 3 Iowa primary election. AdCraft distributed 5,678 copies of the mailer at issue in the
21 Complaint to residents of Linn County, and 4,029 copies of the second mailer, which was

³ See Certification, MUR 6838 (Nov. 23, 2015).

⁴ See Certification, MUR 6838 (Dec. 2, 2015).

1 identical to the mailer attached to the Complaint but omitted a photograph of one local candidate,
2 to residents of Dubuque, Iowa. AdCraft distributed both mailers using the same bulk mail permit
3 number. Gallagher reported that Aossey paid to AdCraft a total of \$3,250 by personal check for
4 the mailers.

5 Once AdCraft identified Aossey as the individual who paid for the mailers, the
6 Commission notified Aossey about the allegations made in the Complaint and offered him an
7 opportunity to respond.⁵ In his Response, Aossey conceded that he was responsible for the
8 mailers but "was not involved at the time with any of the campaigns of the four people pictured
9 on the postcard."⁶ Aossey stated that he was not aware of the requirements of the Act at the time
10 he printed the mailer.⁷

11 IV. LEGAL ANALYSIS

12 A. Failure to Include a Compliant Disclaimer

13 As set forth in the Commission's prior Factual and Legal Analysis, the disclaimer on the
14 mailer does not satisfy the requirements of the Act and Commission regulations because it lacks
15 any statement regarding whether a candidate authorized the mailer.⁸ Moreover, it appears that
16 this partial disclaimer is false because it states that Voters for Better Government paid for the
17 mailer when, in fact, the Commission's investigation revealed that Aossey paid for the mailer.
18 Because the Commission identified Aossey as the individual who paid for the mailers, the

⁵ See Letter from Kathleen Guith, Acting Assoc. Gen. Counsel for Enforcement, FEC, to Joseph Aossey (Feb. 2, 2016).

⁶ Resp. at 1.

⁷ *Id.*

⁸ Factual & Legal Analysis (Feb. 2, 2016) at 2-4 ("F&LA"). Under the Act and Commission regulations, any public communication that expressly advocates the election or defeat of a clearly identified candidate must include a disclaimer. See 52 U.S.C. § 30120(a); 11 C.F.R. §§ 100.22(a), 110.11(a)(2), (c)(2).

1 Commission substitutes Aosse's name in the place of "Unknown Respondent" in the
2 Commission's previous finding that there is reason to believe that Unknown Respondent violated
3 52 U.S.C. § 30120(a) by failing to include a compliant disclaimer on the mailer.

4 **B. Failure to Report Expenditures/Independent Expenditures**

5 The expenditures for the mailers exceeded \$250. Therefore, pursuant to 52 U.S.C.
6 § 30104(c), Aosse should have, but did not, disclose those expenditures to the Commission in
7 an independent-expenditure report covering the relevant quarterly reporting period.⁹ Therefore,
8 the Commission substitutes Aosse's name in the place of "Unknown Respondent" in the
9 Commission's previous findings that there is reason to believe that Unknown Respondent
10 violated 52 U.S.C. § 30104(c) by failing to report expenditures made in connection with the
11 mailer.¹⁰

12 Furthermore, a person that makes independent expenditures aggregating \$1,000 or more
13 after the 20th day, but more than 24 hours, before the date of an election, must file a report
14 describing the expenditures within 24 hours.¹¹ Because the mailers at issue were distributed on
15 May 28, 2014, six days before the June 3, 2014 primary election, and because the amount
16 expended on the mailers exceeded \$1,000, Aosse was also required to, but did not, disclose the
17 disbursements related to the mailers by a 24-hour independent expenditure notice. For the

⁹ F&LA at 4-5; *see* 52 U.S.C. § 30104(c) (requiring a person other than a political committee who makes independent expenditures exceeding \$250 to file an independent-expenditure report with the Commission).

¹⁰ The Commission previously found reason to believe that Unknown Respondent violated 52 U.S.C. § 30104(b) or (c) of the Act because it did not have the information necessary information at that time to ascertain whether the mailer was disseminated by a political committee or an individual or entity other than a political committee. *See* Certification, MUR 6838 (Nov. 23, 2015) (emphasis added). Because the evidence available to the Commission indicates that Aosse worked independently in funding the mailers, *see* note 14 *infra*, Aosse appears to have violated 52 U.S.C. § 30104(c).

¹¹ 52 U.S.C. § 30104(g)(1)(A). Political committees and other persons must file 24-hour notices by 11:59 p.m. on the day following the date on which the independent expenditure communication is publicly distributed. *See* 11 C.F.R. §§ 104.4(c), 109.10(d).

1 reasons below, the Commission exercises its prosecutorial discretion to dismiss the allegation
2 that Aossey violated 52 U.S.C. § 30104(g) by failing to file 24-hour independent expenditure
3 reports.

4 **C. The Amount in Violation Does Not Warrant Further Commission Action**

5 The full cost of the mailers at issue here was \$3,250. In previous matters involving
6 similar facts and amounts in violation, the Commission has not pursued these cases on the basis
7 that the apparent cost of the communication was *de minimis*.¹² Furthermore, the evidence
8 available to the Commission indicates that Aossey was solely responsible for the mailers and did
9 not collaborate with a political campaign.¹³ Last, Aossey filed the required reports on August 26,
10 2016, at the Commission's request. The Commission finds that this matter does not warrant the
11 resources involved in further enforcement proceedings.¹⁴ Accordingly, the Commission
12 exercises its prosecutorial discretion to dismiss the matter and issues a letter of caution.

¹² See, e.g., MUR 6642 (Christopher Kauffman) (taking no further action on partial disclaimer and independent expenditure reporting violations and issuing a letter of caution where cost of billboards at issue amounted to \$3,000); MUR 6377 (Harry Reid Votes) (dismissing allegation as to radio advertisement with partial disclaimer and issuing a letter of caution where cost of advertisement was \$2,135).

¹³ Aossey stated in his Response that he "was not involved at the time with any of the campaigns of the four people pictured on the postcard." Resp. at 1.

¹⁴ See *Heckler v. Chaney*, 470 U.S. 821 (1985).